IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 18, 2014 Session

IN RE JACOB H.

Appeal from the Juvenile Court for Sumner County
No. 2012-JV-282 Barry R. Brown, Judge

No. M2013-01027-COA-R3-JV - Filed October 28, 2014

Mother of the parties' only child filed this action to establish an arrearage judgment for child support owed by Father. At issue is the amount of unpaid child support for the period from April 1998 to September 2012. Mother claims she was entitled to an arrearage judgment in excess of $35,000; Father insists he paid the child support in full, although it is undisputed that he did not pay his support obligation as directed in the 1998 order to the juvenile court clerk. Father initially tendered payments to the clerk; however, at Mother's request, which is undisputed, subsequent payments were mailed directly to Mother, some of which were remitted by Father's mother during periods of financial hardship, and most of which were remitted by Father's wife on a joint checking account with Father. The trial court gave Father credit for all payments remitted directly to Mother, whether remitted by his mother or his wife, for which there was documentary evidence, which totaled $23,742.91, but declined to give him credit for other claimed credits and awarded Mother an arrearage judgment in the amount of $17,337. The trial court, however, did not award prejudgment interest on the arrearage. The court also awarded Mother a portion of the attorney's fees she had requested. On appeal, Mother contends, *inter alia*, the trial court erred by giving Father credit for payments that were not remitted through the clerk's office and for payments remitted by his mother and his wife, for not awarding prejudgment interest on the arrearage, and for not awarding her all of her attorney's fees. For his part, Father contends the trial court erred in not awarding him additional credit for child support payments made via one substantial money order and two income tax intercepts. We affirm the trial court in all respects with the exception of prejudgment interest, finding that awarding interest on a child support arrearage is not discretionary under Tenn. Code Ann. § 36-5-101(f)(1). On remand, the trial court is instructed to award prejudgment interest on the child support arrearage judgment as mandated by Tenn. Code Ann. § 36-5-101(f)(1).

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court is Affirmed in Part, Reversed in Part, and Remanded

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Joseph Y. Longmire, Jr., Hendersonville, Tennessee, for the appellant, Drena D.[1]

Gary Michael Williams, Hendersonville, Tennessee, for the appellee, James C.

OPINION

Drena D. ("Mother") and James C. ("Father") are the parents of one child, Jacob H., who was born in March 1994. Pursuant to a petition filed by the State, the initial support order was entered in August 1995 in the juvenile court for Davidson County. Father's monthly child support obligation was set at $130 per month. At that time, a judgment was also awarded to the State of Tennessee in the amount of $2,080 to compensate the State for financial assistance provided to Mother before and after the birth of the child.

In a second petition filed by the State on Mother's behalf due to Father's failure to pay support, an agreed order was entered in 1998, pursuant to which the State was awarded a judgment in the amount of $4,255.72 that Father was to pay at the rate of $108.33 per month. In the same order, Father's current child support obligation was increased and he was ordered to pay $55 per week; the order further instructed Father to submit all child support payments directly to the clerk of the juvenile court.[2] The order further stated that any payments made directly to Mother in lieu of the clerk "will be considered a gift."

For a period of time, Father remitted all child support payments to the juvenile court clerk as directed in the 1998 order; thereafter, at Mother's request, all child support payments were mailed directly to Mother, although the payments from Father were sporadic and not always in the amounts specified in the child support order.

In May 2012, Mother filed the underlying petition to, *inter alia*, obtain a judgment against Father for the child support arrearage. The petition was tried on December 13, 2012. Mother and Father both testified; Father's wife and his mother also testified. Mother introduced exhibits to establish the amount of the arrearage; Father introduced numerous

[1]This court has a policy of protecting the identity of children in parental termination cases by initializing the last names of the parties.

[2]The clerk was ordered to disburse the arrearage payments to Tennessee Department of Human Services, Fiscal Services Section, and current child support payments to Mother. The clerk was also authorized to charge its statutory fee to Father for its services.

other exhibits to establish that child support payments were made by check on his behalf directly to Mother. He also introduced documentary evidence of a $4,052.13 money order remitted in 2005 and two income tax intercepts, one in 2003 and the other in 2007, that he claimed were deposited with the juvenile court clerk of Davidson County.

The proof established unequivocally that after Father married Mary C. ("Step-mother") in 1999, she assumed all responsibilities for their household finances, including Father's child support payments. She testified that she signed and mailed the child support checks to Mother, all of which were out of a joint checking account with Father, although only her name was printed on the checks. She and Father also testified that his salary was always deposited into their joint account and, thus, it was his salary that was used to pay child support when they had the money to do so. They also testified that Father's mother, Karen C. ("Grandmother"), stepped in and remitted the child support payments directly to Mother when Father was out of work due to injuries or otherwise unable to make the payments due to financial hardship. The three of them testified that Father's financial hardships resulted from several events, including Father sustaining severe burns in an on-the-job injury in 1998, difficulties in 2005 following a move to New York to care for Step-mother's sick father, complications from back surgery from December 2006 to May 2007, and unemployment from April 2009 to September 2009.

Mother admitted that Father began making direct payments of support at her insistence. Mother testified that when she received these payments, she endorsed and deposited the checks into a bank account she had designated for child support.

In addition to the child support checks that were remitted by Step-mother and Grandmother and mailed directly to Mother, Father also sought credit for a 2005 money order and two federal tax intercepts in 2003 and 2007. With respect to the money order, Father and Step-mother testified that they tendered the $4,052.13 money order to the Davidson County juvenile court clerk, which they stated was to be applied toward the judgments in favor of the State. As for the two tax intercepts, Father entered documentary evidence to establish that the 2003 and 2007 tax intercepts were deposited with the juvenile court clerk; however, Father only introduced a copy of a "notice" that the 2003 tax return would be intercepted, but he provided no evidence that the funds were deposited with the clerk. As for the 2007 intercept, he provided no documentation to establish the funds were disbursed to Mother and not applied toward the arrearage judgment he owed the State. Mother testified that she never received the funds from the money order or the two tax intercepts and insisted Father should not be credited.

The trial court gave Father credit for all support payments remitted by Step-mother and Grandmother on his behalf that were supported by the trial exhibits; the court also gave

him credit for the previous payments made directly to the juvenile court clerk. The trial court reserved judgment on the October 2005 money order and the two tax intercepts, noting from the bench that the evidence was unclear as to whether these funds were remitted to satisfy the previous arrearage judgments owing to the State, and gave Father the opportunity to supplement the evidence with documentary proof that the October 2005 money order and/or the tax intercepts were disbursed to Mother. Father, however, failed to supplement the record.

Thereafter, the trial court found that Father's total child support obligation for the period from 1998 to September 8, 2012[3] totaled $41,080, that Father had paid $23,743 in support to Mother, and entered an arrearage judgment for the difference in the amount of $17,337. The trial court further denied Mother's request for prejudgment interest on this arrearage and awarded Mother partial attorney's fees of $1,500.

STANDARD OF REVIEW

Our review on appeal of the trial court's findings of fact is de novo with a presumption of correctness, and we will not overturn those factual findings absent a showing that the evidence preponderates to the contrary. Tenn. R. App. P. 13(d); *see Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). We review the trial court's conclusions of law de novo, with no presumption of correctness. *See Armbrister v. Armbrister*, 414 S.W.3d 685, 692 (Tenn. 2013).

ANALYSIS

Both parties appeal the amount of the arrearage judgment and, specifically, the credits allowed or disallowed in calculating the arrearage. Mother also asserts the trial court should have awarded prejudgment interest and that she is entitled to recover all of her attorney's fees, not just $1,500. We will first address the parties' respective issues concerning the arrearage judgment.

I. CHILD SUPPORT ARREARAGE

A. Non-Conforming Payments Remitted Directly to Mother

Mother contends the trial court erred by crediting Father for support payments that were not made through the court clerk as mandated by the juvenile court order; she contends

[3]The parties had entered an agreed order that Father's child support obligation terminated as of September 8, 2012, the date their child started residing with Father.

such credits were a retroactive modification of support prohibited by Tenn. Code Ann. § 36-5-101(f)(1). We find no merit to the contention that the court's ruling constitutes a retroactive modification of a support order.

It is well-established that Tenn. Code Ann. § 36-5-101(f)(1) prohibits retroactive modifications of child support orders. *See Rutledge v. Barrett*, 802 S.W.2d 604, 606 (Tenn. 1991); *Purdy v. Smith*, No. M2012-02463-COA-R3-CV, 2014 WL 2194451, at *5 (Tenn. Ct. App. May 23, 2014) (citing *In re Christopher A.D.*, No. M2010-01385-COA-R3-JV, 2012 WL 5873571, at *4 (Tenn. Ct. App. Nov. 20, 2012)). The foregoing notwithstanding, we have also held that Tenn. Code Ann. § 36-5-101(f)(1) does not bar a court from awarding credits to the obligor in order to calculate the amount of past-due support. *Netherton v. Netherton*, No. 01-A-01-9208-PB-00323, 1993 WL 49556, at *2 (Tenn. Ct. App. Feb. 26, 1993). In so holding, we have made a point of distinguishing credits from a retroactive modification, reasoning that a modification entails adjusting the amount of child support the non-custodial parent is ordered to provide whereas a credit recognizes "that the obligor parent provided the support that the court ordered in the first place." *Peychek v. Rutherford*, No. W2003-01805- COA-R3-JV, 2004 WL 1269313, at *4 (Tenn. Ct. App. June 8, 2004) (citing *Netherton*, 1993 WL 49556, at *2). Thus, credits against a child support arrearage do not violate Tenn. Code Ann. § 36-5-101(f)(1) as long as the amount of child support is not altered. *Id.*; *Benson v. Benson*, No. 01-A-01-9601-CV-00043, 1996 WL 284731, at *2 (Tenn. Ct. App. May 31, 1996).

Father's child support obligation from April 1998 to September 2012 was set at $55 per week by the 1998 agreed order. In making its ruling following the trial at issue, the trial court never changed this amount; therefore, the trial court did not retroactively modify the 1998 child support order. Rather, the trial court simply recognized that Father should receive credit for payments which were expressly remitted to and received by Mother as child support.

B. The "Necessaries Rule" and Equitable Considerations

Alternatively, Mother contends the court erred in awarding Father credit for the child support payments made in contravention to the terms of the order, because he did not make an "affirmative showing" that the payments were used for "necessaries." We find no merit to this contention for two reasons. The trial court did not give Father credit based on the necessaries rule. Furthermore, Father is entitled to such credits based on the equities of this case.

Generally, an obligor parent is not given credit for child support payments made in a manner other than that specified in the operative child support order. *Smith v. Smith*, 255

S.W.3d 77, 83 (Tenn. Ct. App. 2007). The rationale behind this rule, in part, is that permitting such a credit could unwittingly give control over the use of the funds to the non-custodial obligor parent, "interfering with the custodial parent's duty and right to disburse the funds as he or she deems necessary." *Id*. Our courts are understandably reticent to act in derogation of this general rule.

There are, however, two recognized exceptions which permit crediting the obligor parent for non-conforming payments. One is the "necessaries rule," *see Oliver v. Oczkowicz*, No. 89-396-II, 1990 WL 64534, at *2. (Tenn. Ct. App. May 18, 1990); the other is the "equitable considerations rule." *See Smith*, 255 S.W.3d at 78, and *Simpson v. Simpson*, No. E2005-01725-COA-R3-CV, 2006 WL 1735134, at *5 (Tenn. Ct. App. June 26, 2006). Under either exception, the court may credit the direct payments toward support arrearages as long as there is proper evidentiary support.

We first employed the "necessaries rule" for non-conforming payments in *Oliver v. Oczkowicz*, in which case the obligor father sought credit for a number of voluntary expenditures for the child, including private school tuition, medical bills, credit card charges, and a school uniform. *Oliver*, 1990 WL 64534, at *2. In considering whether the father was entitled to a setoff against child support for these expenditures, we notably stated:

> [W]e think . . . a credit for voluntary payments made on behalf of the children [should be allowed] only where the payment is for the children's necessaries which are not being supplied by the custodial parent. This result is in line with what is apparently the majority view, which disallows credits for payments not made in accordance with the support order, and it recognizes that *equitable considerations may allow credits under certain circumstances*.

Id. (citations omitted) (emphasis added).

Since *Oliver*, we have applied the "necessaries rule" under a variety of fact patterns for non-conforming payments including: (1) where the obligor, non-custodial parent seeks credit for voluntary expenditures on the child's behalf, *Moore v. Youngquist*, No. 01-A-01-9012-CH-00433, 1991 WL 57982, at *2 (Tenn. Ct. App. Apr. 19, 1991); (2) where the obligor, non-custodial parent seeks credit for child support payments made payable to the child, *Brownyard v. Brownyard*, No. 02A01-9803-CH-00063, 1999 WL 418352, at *15 (Tenn. Ct. App. June 22, 1999); (3) where the obligor, non-custodial parent seeks credit for expenditures when the child shares a primary residence with or is cared for by that parent, *Peycheck*, 2004 WL 1269313, at *4-5; and (4) where the obligor, non-custodial parent seeks credit for direct payments to the obligee, custodial parent, *Mock v. Decker*, No. W2004-02587-COA-R3-JV, 2005 WL 3447682, at *3-4 (Tenn. Ct. App. Dec. 15, 2005). Under these

factual scenarios, we have consistently held that the non-custodial parent may be given credit where the payments are shown to be for "necessaries" that were not provided by the custodial parent. *See id.* The types of "necessaries" which are usually considered include: food, shelter, tuition, medical care, legal services, and funeral expenses. *Peycheck*, 2004 WL 1269313, at *4.

The foregoing notwithstanding, we find the facts of this case come under the purview of the equitable considerations exception, not the necessaries rule, as was our determination in *Simpson*, 2006 WL 1735134, at *5. Accordingly, we focus our analysis on the equitable considerations exception.

In *Simpson*, the child support order required the father to pay weekly child support directly to the court. *Id*. at *1. The mother filed a petition seeking a significant child support arrearage plus interest on the basis that the father had failed to pay support through the court clerk as required by the order. *Id*. The father testified that the mother and he communicated regularly and arranged "for the payment of support to be agreed upon from time to time." *Id*. at *5. The evidence also showed that the father made payments to third parties "*at the direction of [the mother]*" for the child's tuition, car payments/insurance, and other expenses. *Id*. (emphasis added). Following trial, a judgment was entered against the father for an arrearage. *Id*. at *2. In calculating the arrearage, the trial court credited payments made by the father directly to the mother, but excluded payments the father had made to third parties for the various expenses. *Id*. Father appealed claiming, in relevant part, that the payments for expenses should also have been credited to his support obligation as they were made pursuant to the mother's express directives. *Id*. We agreed with the father, finding he was entitled to credit on equitable grounds. *Id*. at *5. As we explained:

> We see no practical distinction between Father sending child support payments directly to Mother, who in turn uses that money to pay the child's car payment and/or car insurance, and the situation here where Mother instead directs Father to make those payments for her, thereby eliminating the middle step. These payments clearly would be child support if Mother directed Father to pay the money directly into her checking account and he did so. We do not believe these same payments lose their character as child support simply because Mother, instead of directing the payments to go into her checking account, directed the payments to go to third parties in payment of expenses incurred by Mother for the child. *The question is not whether Father should be given credit for these payments because they should be deemed for necessities under the law. Rather, the key factual point is that Mother specifically directed Father to make these payments for her. It would be inequitable for Mother to specifically direct Father to make these payments for*

her on the child's behalf, which Father did, and then for Mother to turn around and claim they were gifts.

Id. (emphasis added).

We concluded the preponderance of the evidence weighed against the trial court's finding that the payments to third parties were intended as gratuitous payments, not child support payments. *Id*. As noted in the quote above, we also reasoned that the issue was not limited by the "necessaries rule," rather, it was a question of equity where Mother was "directing Father where to send the child support payments." *Id*.

In another case in which this court applied equitable considerations, *Smith v. Smith*, 255 S.W.3d 77 (Tenn. Ct. App. 2007), we addressed whether the obligor parent should get credit for support payments made directly to the children. Two approaches were analyzed in depth. *Id*. at 83-84. Under what we referred to as the more liberal approach, trial courts are permitted to exercise their discretion on a case-by-case basis to determine whether an obligor parent should be given credit against his child support obligation for payments made directly to the children. *Id*. (citing *Stinson v. Carter*, 543 So.2d 1198, 1200 (Ala. Civ. App. 1989) (holding that whether to credit for payments to the child is within the sound discretion of the trial court, and "[a]lthough a trial court may, under certain circumstances, allow a father credit against child support arrearages, it is under no compulsion to do so"); *McCrady v. Mahon*, 119 N.H. 247, 400 A.2d 1173, 1174 (1979) (holding that whether to allow credit for payments to the child is within the discretion of the trial court, and the trial court should allow such credit "under special circumstances where equitable considerations warrant such an allowance")). "In exercising its discretion, courts may weigh all equitable considerations, such as whether allowing credit works an injustice to the obligee parent or whether to hold otherwise would unjustly enrich the obligee parent." *Id*. at 84. (quoting *Goodson v. Goodson*, 231 S.E.2d 178, 182 (N.C. Ct. App. 1977) (listing factors to consider, but stating that "controlling principle is that credit is appropriate only when an injustice would exist if credit were not given.")) (other citations omitted).

Under the more conservative approach, the obligor parent is given credit for payments made directly to the child but "only under specific circumstances that would create an injustice if credit were not given." *Id*. at 84-85. As discussed, "[o]ne specific circumstance is where the parties have agreed or consented to this manner of payment." *Id*. at 84. (citing *Bendix v. Bendix*, 550 N.E.2d 825, 826 (Ind. Ct. App. 1990) (noting rule that credit for payments not conforming to the child support order is allowable when the parties have agreed to an alternate method of payment); *Dunn v. Dunn*, 546 So.2d 819, 827 (La. Ct. App. 1989) (refusing to give the father credit for payments made directly to the child, but allowing credit for payments made to the child's school at the mother's request); *Guri v. Guri*, 122 N.H. 552,

448 A.2d 370, 372 (1982) (noting that obligor parent is allowed credit for payment to child when obligee parent consents to such payments)). Our analysis of the more conservative approach recognized that "the custodial parent should have unfettered discretion over how to use child support proceeds, and the obligor parent should not be able to inhibit the exercise of that discretion unilaterally," nevertheless, the custodial parent should be estopped from objecting "*if he or she has entered into an agreement with the obligor for payments to be made directly to the child or in a manner contrary to the child support order*." *Id*. (citing *Guri*, 448 A.2d at 372) (emphasis added).

In *Smith* we discussed cases wherein the obligor parent received credit against his child support obligation, even though the payment was made to the child, provided the custodial parent received the money and had control of the funds; conversely, we noted that courts also reasoned that credit should not be allowed "when the money paid to the child is not accessible by the custodial parent, and the child maintains control over the funds." *Id.* (citations omitted). The reasoning for allowing or denying such credit was based on whether "*the custodial parent has the privilege and responsibility of dictating how child support funds should be used*." *Id.* at 85. (emphasis added). "Unless the custodial parent receives the money and is in control of how it is disbursed, then giving the obligor parent credit toward his child support obligation for monies given directly to the child interferes with this right." *Id.* (citations omitted). Considering the two approaches, we concluded in *Smith* that the more conservative approach was in harmony with Tennessee law and held that "a trial court may give credit for such payments only under specific circumstances that would create an injustice if credit were not given." *Id.* at 85.

From our reading *Smith* and *Simpson*, we have concluded the "equitable considerations rule" should apply in specific circumstances when, for example: (1) the obligee parent received the payments, directly or indirectly, and exercised control over the funds, or the obligee parent requested that the support payment be remitted to a third party or acquiesced in such payment, and (2) the "specific circumstances" demand a credit to avoid an injustice. *See Smith*, 255 S.W.3d at 83-85; *see also Simpson*, 2006 WL 1735134, at *5. Therefore, as we did in *Smith*, we shall now consider whether this case presents such a specific circumstance.

In applying these factors to the instant case, we note it is undisputed that Mother specifically asked Father to remit all support payments directly to her and that Father agreed to this non-conforming procedure. This procedure was followed for several years, although the support checks that were remitted to Mother were written either by Step-mother on the joint account with Father or by Grandmother on her separate account. The documentary evidence established that the "memo" line on the checks confirmed that all such payments were for child support. Moreover, the check amounts were for increments of $55, which was

Father's weekly support obligation. Mother also testified that she knew the checks were for support, she endorsed the checks upon receipt, deposited them into a separate bank account she had designated for child support, and that she used the funds for their child's benefit.

The relevant factors weigh in favor of crediting Father for all child support payments remitted directly to Mother on Father's behalf by Step-mother and Grandmother for, to hold otherwise, would "unjustly enrich Mother and lead to an inequitable result." *See Smith*, 255 S.W.3d at 86. Therefore, we have concluded the specific circumstances of this case warrant crediting Father with all non-conforming child support payments Mother received.

Before we leave this subject, we acknowledge Mother's related contention that the checks remitted by third parties, Step-mother and Grandmother, should not have been credited. Her argument is that the checks had to be drawn on Father's personal account (one that bears his name on the checks), if not hand-written by Father. In this vein, she contends that no credits should have been awarded to Father as he did not personally tender child support payments to Mother. We find such an argument without merit and find no reason to discuss this issue further other than to affirm the trial court's finding that the evidence fully supports the fact that Father was the de facto provider of the support payments remitted to Mother by Step-mother and Grandmother.

For the reasons stated above, we affirm the trial court's decision to credit Father for the non-conforming payments remitted directly to Mother.

C. Additional Credits Claimed By Father

Father contends the trial court erred by failing to award him additional credits for the two federal tax intercepts totaling $3,764, and a money order in the amount of $4,052.13.

The trial court credited Father a total of $23,742.91 for checks and money orders against Father's $41,080.10 child support obligation to find that he was in arrears $17,337. The trial court did not give Father credit for a $4,052.13 money order from October 2005 or either of two federal tax intercepts, ruling that the evidence was unclear as to whether these funds were applied to satisfy the two prior judgments awarded to the State or whether they were disbursed to Mother. Mother denied receiving any of these funds and Father provided no evidence concerning how the funds were applied by the court clerk.

At the close of trial, the judge held open proof for several months so Father could clear up this discrepancy by providing additional documentary evidence to show who received the proceeds, but Father provided no additional proof. Thereafter, the court entered

its order denying Father credit for either of the tax intercepts or the $4,053.13 money order. We have determined the evidence does not preponderate against these findings.

Specifically, the evidence shows that Mother received financial assistance from the State of Tennessee under the Temporary Assistance for Needy Families program both before and after the birth of the child. After the State filed suit on Mother's behalf to establish child support in 1995, a judgment was entered for the State (not Mother) to recover Mother's birth expenses totaling $2,080 that had been paid by the State.[4] Subsequently, the State filed a second petition on Mother's behalf due to Father's failure to pay support in 1998. A $4,255.71 judgment was subsequently entered in favor of the State of Tennessee. Thus, two judgments were entered against Father in favor of the State in the aggregate amount of $6,335.71.

Mother testified that she did not receive checks for either the 2003 or the 2007 intercepts or the money order at issue. Father entered two documents into evidence regarding the intercepts. The first document was an August 2003 letter from the Department of Human Services notifying Father that his refund would be intercepted to satisfy a debt of past due support, including $1,882 owed for the Temporary Assistance for Needy Families program. The second document was a February 2007 letter from the U.S. Department of the Treasury advising that a tax intercept of $1,882 had been applied to Father's tax refund. Unfortunately, neither document nor any evidence in the record indicates that Mother received the benefit of either tax intercepts.

With respect to the $4,052.13 money order, Father and Step-mother testified that they tendered the money order in the amount of $4,052.13 to the Davidson County juvenile court clerk to resolve the remaining balance on Father's child support judgment with the State. The documentary evidence confirms the money order was processed by the juvenile court clerk, but there is no evidence that any of this money was disbursed to Mother, and Mother testified that she did not receive these funds.

From these facts, we have concluded the evidence does not preponderate against the trial court's finding that Father is not entitled to a credit for the tax intercepts or the $4,052.13 money order. We, therefore, affirm the trial court's decision to deny additional credits.

[4] Tenn. Code Ann. § 71-3-124 (a)(1) states that recipients of temporary assistance "shall be deemed to have assigned to the state any rights to support from any other person" that the recipient may have.

II. PREJUDGMENT INTEREST ON THE CHILD SUPPORT ARREARAGE

Having determined the trial court's judgment should be affirmed, we move on to Mother's contention that the trial court erred in denying her request for prejudgment interest on the child support arrearage. As Mother correctly asserts, Tenn. Code Ann. § 36-5-101(f)(1) states that an arrearage judgment for child support shall accrue interest. The statute reads in relevant part:

> If the full amount of child support is not paid by the date when the ordered support is due, the unpaid amount is in arrears, shall become a judgment for the unpaid amounts, and shall accrue interest from the date of the arrearage, at the rate of twelve percent (12%) per year. All interest that accumulates on arrearages shall be considered child support. Computation of interest shall not be the responsibility of the clerk.

Tenn. Code Ann. § 36-5-101(f)(1).

We have previously held that prejudgment interest for child support arrearage(s) is mandatory, non-discretionary, and accrues from the date when the support was due, not from the date a judgment for the unpaid amounts is entered. *See Reeder v. Reeder*, 375 S.W.3d 268, 281 (Tenn. Ct. App. 2012); *Estes v. Estes*, No. M2010-01243-COA-R3-CV, 2012 WL 1357550, at *10 (Tenn. Ct. App. Apr. 16, 2012). The record before us does not provide the trial court's reasons for denying prejudgment interest; all we know is that the trial court marked out the phrase written on the order submitted by Mother's attorney which would have awarded interest at 12%. The relevant portion of the order reads:

> It Is, Therefore, Ordered, Adjudged and Decreed that [Mother] is awarded a judgment against [Father] in the amount of $17,337.00 which is child support arrearage ~~with appropriate interest at 12% as shown by~~ **EXHIBIT A** attached hereto, for which execution may issue if necessary; . . .

In his brief, Father asserts, without any citation to the record to support such assertion, that the trial court declined to award prejudgment interest because the amount of support owed and when it was owed was too speculative. We find no support in the record for this assertion and believe a mathematical computation can be had to determine what was owed and when, based on the credits the trial court allowed and those the trial court denied.

Accordingly, we respectfully reverse the trial court on this issue and remand with instructions to award Mother interest consistent with Tenn. Code Ann. § 36-5-101(f)(1).

III. MOTHER'S ATTORNEY'S FEES

Lastly, Mother contends the trial court abused its discretion by not awarding her the full amount of attorney's fees incurred in this litigation. The trial court reduced Mother's request for attorney's fees in the final order from $4,926.25 to $1,500.

Tenn. Code Ann. § 36-5-103(c) states that the custodial parent may, at the court's discretion, recover attorney's fees incurred in enforcing a child support order. Unless there is a clear showing of abuse of that discretion in awarding these fees, we will not interfere with this decision. *Estes*, 2012 WL 1357550, at *10 (citing *Taylor v. Fezell*, 158 S.W.3d 352, 359 (Tenn. 2005)). Mother quotes the statute, but proffers no argument as to how the trial court may have abused its discretion. In light of the significant credits awarded to Father against the arrearage, we affirm the trial court's decision to reduce Mother's attorney's fees.

IN CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court in all respects, except for prejudgment interest, and this matter is remanded for calculation of interest consistent with Tenn. Code Ann. § 36-5-101(f)(1). Costs of appeal are assessed against Father.

_____
FRANK G. CLEMENT, JR., JUDGE